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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 265

JACK COAST, PETITIONER

vs.

HUNT OIL COMPANY AND OHIO OIL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Jack Coast, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on April 10, 1952, rehearing denied May 15, 1952.

OPINIONS BELOW

The opinion and supplemental opinion of the District Court (R. 44-58)[1] are reported in 96 F. Supp. 53. The opinion of the United States Court of Appeals for the fifth Circuit (R. 63) is reported in 195 F. (2d) 870.

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[1] Record references are to the printed record.

JURISDICTION

A judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 10, 1952 (R. 67) and a rehearing was denied on May 15, 1952 (R. 78). The jurisdiction of this Court is invoked under Act of Congress of June 25, 1948, c. 646, 62 Stat. 928 (28 U.S.C. § 1254 (1).

STATUTES INVOLVED

15 U.S.C. 1

"Every contract, combination in the form of trust or otherwise, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices

on any commodity herein, involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court." July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693.

15 U.S.C. 2

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or both said punishments, in the discretion of the Court." July 2, 1890, c. 647, § 2, 26 Stat. 209.

15 U.S.C. 15

"Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustain-

ed, and the cost of the suit, including a reasonable attorney's fee." Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

15 U.S.C. 16

"A final judgment or decree rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken.

"Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof." Oct. 15, 1914, c. 323, § 5, 38 Stat. 731.

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Rule 17 (b)

"*Capacity to Sue or Be Sued.* The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law

under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appoined by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., § § 754 and 959 (a)."

Rule 19 (a)

"*Necessary Joinder.* Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs, or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff."

QUESTIONS PRESENTED

1.

Is the petitioner, Jack Coast, a "person" who has been "injured in his business or property" within the meaning of the anti-trust laws (15 U.S.C., Sec. 15)?

2.

If it is held that petitioner is not a "person" who has been "injured in his business or property" and that the action must be brought by the partnership, Coast Oil Company, does not the partnership itself have capacity to

sue on a claim being asserted as "a substantive right existing under the . . . laws of the United States" despite the local law of the state of the domicile of the partners (Rule 17 (b) of the Federal Rules of Civil Procedure)?

3.

If it is held that petitioner is not a "person" who has been "injured in his business or property" and that the action must be brought by the partnership, Coast Oil Company, appearing through its sole and only partners, the petitioner and Justin R. Querbes, who has refused to join the action; would joining Querbes as a party defendant under Rule 19 (a) of the Federal Rules of Civil Procedure oust the Federal District Court of jurisdiction?

STATEMENT OF THE CASE

Petitioner Jack Coast, a resident of Caddo Parish, Louisiana, filed a complaint in the United States District Court for the Western District of Louisiana under the anti-trust laws of the United States seeking damages against Hunt Oil Company, a Texas corporation, and Ohio Oil Company, an Ohio corporation (R. 1). Petitioner alleged that these two companies and others monopolized and controlled all production, refining and marketing of petroleum products produced from the Cotton Valley Oil Field of Webster Parish, Louisiana. Petitioner stated that he owned an undivided 49% interest in a certain refinery in the Cotton Valley Field, which refinery was operated under the name of Coast Oil Company and that he was entitled to and had received, since March, 1943,

49% of the profits derived from its operation. Petitioner itemized the total damages attributed to the defendants' monopolistic practices but alleged that he was entitled to only 49% of the total damages which, under the law, should be increased threefold.

The respondents, Hunt Oil Company and Ohio Oil Company, obtained an extension of time for pleading (R. 10) and thereafter filed separate motions to dismiss the complaint, to strike certain allegations therefrom, for a more definite statement, and further enlargement of time for answer if the motions were denied (R. 11 and 25).

After these motions were filed petitioner filed an amended complaint as a matter of course under Rule 15 (a) of the Federal Rules of Civil Procedure (R. 33) setting forth that Coast Oil Company was a commercial partnership organized under the laws of Louisiana, domiciled in Caddo Parish, and that Justin R. Querbes, a resident of Caddo Parish, Louisiana, owned the remaining 51% of the refinery and that Querbes received 51% of the profits derived from its operation. (The Articles of Partnership appear in the Record at page 41). Petitioner stated that he was the managing partner of Coast Oil Company by virtue of the Articles of Partnership and that he devoted his entire time to the operation of the refinery, while Justin R. Querbes was not engaged in the operation of the refinery but was principally employed in other large business ventures. Petitioner further alleged that Justin R. Querbes had refused to join him in bringing the action,

either in his own behalf or on behalf of the partnership, Coast Oil Company.

In this same pleading (R. 35) petitioner further prayed that by leave of Court he be allowed to amend his original petition so as to add the following new paragraphs, to-wit:

"26.

"In the first alternative this claim is brough by Coast Oil Company for Jack Coast and for his use and benefit.

"27.

"In the second alternative this claim is brought by Coast Oil Company for Jack Coast and for his use and benefit and for the purpose of this alternative claim, Justin R. Querbes is made a party defendant (except, however, that the demand for judgment for damages is not made against him).

"28.

"In the third alternative this claim is brought by Coast Oil Company, by Jack Coast, managing partner, and for the purposes of this alternative claim the amount of damages asserted is 100% of the damages caused in the operation of the refinery as set forth in paragraph 21 of the complaint, or $2,784,803.19, and the judgment demanded is for threefold that amount or $8,354,409.57, plus a reasonable attorney's fee.

"29.

"In the fourth alternative this claim is brought by Coast Oil Company, appearing through Jack Coast and Justin R. Querbes, and for this purpose making Justin R. Querbes a party defendant (except, however, that the demand for judgment for damages is not made against him); and for the purposes of this alternative claim the amount of damages asserted is 100% of the damages caused in the operation of the refinery as set forth in paragraph 21 of the complaint, or $2,784,803.19, and the judgment demanded is for threefold that amount of $8,354,409.57, plus a reasonable attorney's fee.

"30.

"In the fifth alternative it is alleged that Justin R. Querbes should be made a party defendant (except, however, that the demand for judgment for damages is not made against him) for the purposes of the claim asserted by plaintiff Jack Coast in his own right against Hunt Oil Company and The Ohio Oil Company.

"31.

"In the sixth alternative this claim is brought by Jack Coast and Justin R. Querbes, who for the purposes of this alternative claim is made a party defendant (except, however, that the demand for judgment for damages is not made against him),

> and for the purposes of this alternative claim the amount of damages asserted is 100% of the damages caused in the operation of the refinery as set forth in paragraph 21 of the complaint, or $2,784,803.19, and the judgment demanded is for threefold that amount or $8,354,409.57, in the proportions of 49% to Jack Coast and 51% to Justin R. Querbes, plus a reasonable attorney's fee."

The District Court refused to allow the amendments and sustained the motions of the respondents to dismiss for failure to state a cause of action upon which relief could be granted. In its original opinion the District Court held that the plaintiff, Jack Coast, had no cause of action on the matters complained of for the reason that he had not been injured "in his business or property", and that the cause of action was that of a partnership, Coast Oil Company, of which Jack Coast and Justin R. Querbes were partners. It held that in Louisiana a suit on a partnership claim must be brought in the name of the partnership appearing through each and every one of its partners, but that joining Justin R. Querbes as a party defendant to the suit under the authority of Rule 19 (a) of the Federal Rules of Civil Procedure "would deprive this Court of jurisdiction, since according to the allegations both he and plaintiff are citizens of Louisiana". (R. 56). In a supplemental opinion the District Court stated "Generally speaking, of course, where the action is for the enforcement of rights arising under or created by a federal statute such as the Anti-Trust Act, the Court has jurisdiction re-

gardless of the citizenship of the parties; and all incidental and ancillary questions, even though they involve a state law, can and should be disposed of, if otherwise the case is brought by one having a right or standing to do so." (R. 59). The Court then held that Querbes (whom it had held was necessary to the action) could not be joined as a defendant under Rule 19 (a) of the Federal Rules of Civil Procedure since the plaintiff alone had no standing to bring the action, and he could not join Querbes as a defendant since "the other defendants have no interest in this controversy between the two partners, and to that extent it would be between citizens of this state alone, and in which the Court would be without jurisdiction". (R. 59).

On appeal to the United States Court of Appeals for the Fifth Circuit the opinion and judgment of the District Court was affirmed.

SPECIFICATION OF ERRORS

The following errors in the opinion and decision of the United States Court of Appeals for the Fifth Circuit are specified.

1.

In holding that Jack Coast is not a "person" who in his own right has a cause of action under the anti-trust laws of the United States.

(a) In holding that Jack Coast was not injured in his business;

(b) In failing to hold that he was injured in his property.

2.

In holding that Jack Coast as managing partner of Coast Oil Company could not bring the action on behalf of the partnership as provided in Rule 17 (b) Federal Rules of Civil Procedure.

3.

In denying petitioner's motion for leave to amend in the respects requested to make Justin R. Querbes a party defendant under authority of Rule 19 (a) Federal Rules of Civil Procedure.

(a) In holding that the joining of Querbes would oust the Court of jurisdiction because it would destroy diversity of citizenship;

(b) In holding that Querbes could not be joined as a party defendant because the petitioner, Jack Coast, did not have a cause of action in his own right;

(c) In holding that Querbes could not be joined as a party defendant because one partner cannot sue another.

REASONS FOR GRANTING THE WRIT

1.

The Court of Appeals has decided several important questions of Federal laws which have not been but should be settled by this Court. The first such question arises under the Act of Congress quoted above (15 U.S.C., Section 15), which specifically grants to "any person who

shall be injured in his business or property by reason of anything forbidden in the anti-trust laws" the right to sue for damages in the Federal courts.

The allegations of the complaint, which are taken as true for purposes of a motion to dismiss for failure to state a cause of action, set forth the following facts: Petitiner has at all times since March 30, 1943, been engaged in the operation of a refinery in the Cotton Valley Field of Webster Parish, Louisiana; the refinery is real estate and the petitioner owns 49% of the physical real estate; petitioner is entitled to 49% of the profits in the operation of the refinery; petitioner is the managing partner of the refinery under the Articles of Partnership and is obligated to devote his entire time to its operation; Justin R. Querbes owns the remaining 51% of the refinery and is entitled to 51% of the profits but Querbes is not engaged in operating the refinery but, in fact, devotes his time to an entirely different business; Querbes has refused to join in this action with petitioner; and the complaint describes in detail the conditions existing in the Cotton Valley Field brought about by the monopolistic practices of the respondents which caused a shut-down of the refinery on September 1, 1945, and have seriously curtailed its operations since that date.

Petitioner asserts that he is a "person" who has been "injured in his business or property" under the anti-trust laws and that the decision of the Court below is in conflict with applicable decisions of this Court. In the case of *Atlantic v. Chattanooga Foundry and Pipeworks, et al.*

127 Fed. 23, Affirmed 203 U. S. 390, 27 S. Ct. 65, 51 L. Ed. 241, this Court held that the City of Atlanta is a "person" within the meaning of the anti-trust laws. In reaching this conclusion the Court approved the opinion of the United States Court of Appeals for the Sixth Circuit, wherein that Court stated:

> "Congress evidently foresaw the wholesome effect of pecuniary responsibility for injuries resulting from such forbidden combinations and the courts should not devitalize the remedy by strained interpretations calculated to encourage disregard of the law. The act give the remedy to 'any person' injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act.' If Congress had the power to declare unlawful a combination which was intended to restrain interstate commerce by enhancing the value of a commodity when the subject of interstate commerce, it had the power to give a compensatory remedy to any person directly affected by the unlawful agreement." *City of Atlanta v. Chattanooga Foundry and Pipeworks, et al, 127 Fed.* 23 at page 27.

The foregoing statement clearly and correctly sets forth the broad purpose and intent of the anti-trust laws. A similar statement appears in the case of *Mandeville Island Farms, Inc. v. American Crystal Sugar Company,* 334 U. S. 219, 68 S. Ct. 996, 92 L. Ed. 1328, where it was stated:

> "The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to

> sellers. Nor does it immunize the outlawed acts because they are done by any of these. Cf. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150; *American Tobacco Co. v. United States*, 328 U. S. 781. The Act is comprehensive in its terms and coverage, *protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.* Cf. *United States v. South-Eastern Underwriters Assn., supra*, at 553." (Emphasis supplied).

The Court of Appeals for the Fifth Circuit has given a restrictive interpretation to the anti-trust statutes and has violated the intent of those laws in holding that Jack Coast is not a "person" who has been injured in his business or property. The *Atlanta* and *Mandeville Island Farms, Inc.* cases, supra, are illustrative of the comprehensive protection given persons under the anti-trust laws. To say that Jack Coast is not protected is to lose sight of the evils which the Act was passed to alleviate.

The holding of the United States Court of Appeals in this case also conflicts with the language and import of the case of *Roseland v. Phister Mfg. Co.*, 125 F. 2d 417, rendered by the Court of Appeals for the Seventh Circuit. That case dealt with a complaint of a salesman of fire prevention equipment under the anti-trust laws against three defendant manufacturers of this equipment. The defendants moved to dismiss the complaint on the grounds that the business described was not a business within the meaning of the Act. The Court stated:

"The language of the statute is general and all in clusive. It includes any person who shall be injured in his business or property. We assume that the word business was used in its ordinary sense and with its usual connotations. It signifies ordinarily that which habitually busies, or engages, time, attention or labor, as a principal serious concern or interest. In a somewhat more truly economic, legal and industrial sense, it includes that which occupies the time, attention, and labor of men for the purpose of livelihood or profit, - persistent human efforts which have for their end pecuniary reward. It denotes 'the employment or occupation in which a person is engaged to procure a living'. Allen v. Commonwealth, 188 Mass. 59, 74 N.E. 287, 288, 69 L.R.A. 599."

* * * *

"* * *. His (the plaintiff's) position is that he is one who has for sometime engaged in the activity of an exclusive sales agent, making it his calling, representing his employer, possessing an exclusive territory of several states and having an established clientele in the various communities thereof.

"*Such a business, says the defendants, is that of themselves and not that of plaintiff.* We cannot agree. The Act is penal so far as criminal liability is concerned but is remedial in so far as it creates a remedy for damages. City of Atlanta v. Chattanooga Foundry & Pipe Co., C.C., 101 F. 900. * * * Consequently, accepting the words of Congress at their face value, we think the complaint sufficient. True, plaintiff is not a competitor of the offending parties, but he has been engaged in the vocation of general sales agent for a number of years, built up

a clientele, acquired knowledge of their conditions, their buying power and other relevant characteristics. He has busied himself with the sales of defendants' products as a means of livelihood - the selling of merchandise by him under exclusive sales contracts constitutes his business. *We may not by what seems to us a strained and unjustified limitation bar plaintiff from the statutory remedy.* Congress evidently foresaw the wholesome effect of pecuniary responsibility for injuries resulting from such forbidden combinations and the courts should not devitalize the remedy by strained interpretations calculated to encourage disregard of the law'. Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 27 S. Ct. 65, 51 L. Ed. 241." (Emphasis supplied).

Another case directly in point is *McWhirter v. Monroe Calculating Machine Co., Inc.*, (D.C., W.D. Mo. 1948) 76 Sup. 456. The plaintiff, suing under the Act here involved, was the manager of a local district of Marchant Calculating Machine Co. His compensation was based on 35% of the sale price of each sale made through his district. He brought this action against the defendant to recover damages sustained as a result of alleged violations of Section 13 of Title 15. The defendant contended that the plaintiff could not maintain the action; that Section 15 was not applicable to the manager of a company who received his compensation on a commission basis. The Court held:

"It is alleged that the defendant discriminated between purchasers of commodities of like grade and

> quality in that he granted to some who were not entitled thereto a 10 percent discount, which was refused to others similarly situated; that it was done for the purpose of preventing competition - and creating a monopoly; *and that as a result thereof this plaintiff, as manager of a competing company and who received his compensation through commissions, was prevented from making sales and was thereby damaged.* I think the plaintiff comes within the provision of the Act and is entitled to maintain his action. Roseland v. Phister Mfg. Co., 7 Cir., 125 F. 2d 417, 139 A.L.R. 1013; Midland Oil Co. v. Sinclair Refining Co., D.C. 41 F. Supp. 436." (Emphasis supplied).

In the instant case the United States Court of Appeals, following the District Court, has concluded that the "person" injured by the defendants is not Jack Coast, an individual, but the partnership, Coast Oil Company, composed of only two partners, Coast and Querbes. Querbes has refused to sue either individually or on behalf of the partnership. The Court of Appeals has held that Jack Coast cannot sue, citing Louisiana cases which hold that on debts due a partnership the partnership must assert the claim as a partnership, appearing through all of its partners (R. 64).

Petitioner does not question the jurisprudience of Louisiana where sums are due a partnership on obligations to the partnership, but petitioner here asserts that the anti-trust laws have given to *him* personally a right of action for injury to his business and property which *he* may enforce for *his own* protection. The United States Court

of Appeals has confused the right to sue on partnership obligations with the right given this petitioner as an individual and all others in the same category who have been injured by activities prohibited by the anti-trust laws.

It is undisputed that Coast is in the business of operating a refinery in the Cotton Valley Field; that he is the manager of the refinery; and that he obtains his livelihood from the operation of his business. There is no escape from the conclusion that Jack Coast as an individual has been injured in his business - the business of operating the refinery.

Coast has likewise been injured in his property. Under the law of Louisiana the refinery is an immovable or real estate. *Buchler v. Fourroux*, 193 La. 445, 190 So. 640. Under the well established jurisprudence of Louisiana a commercial partnership as such cannot own real estate since real estate acquired by commercial partnerships vests title in the partners as joint owners and does not vest title in the partnership entity. *Skillman v. Purnell, et al*, 3 La. 494; *Thomas v. Scott*, 3 Rob. 256; *Hollingsworth v. Atkins Brothers*, 46 La. Ann. 515, 15 So. 77. Either partner in a commercial partnership can sell his interest in the real estate. *Willey v. Carter*, 4 La. Ann. 56; *John Calder and Co. et al. v. Their Creditors*, 47 La. Ann. 346. Jack Coast owns 49% of the real estate, and the value of this property has been materially affected by the actions of the defendants. The plain language of the anti-trust laws gives Jack Coast the right to recover for any damages he can establish to his property.

This case presents a vital question involving the interpretation of the basic right of a person to sue for damages under the anti-trust laws of the United States and so far as can be found no case has come before any Federal Court dealing with the exact facts which confront the petitioner here.

In the opinion of the District Court the Judge stated "No case involving the rights of individual partners to sue on behalf of the partnership for damages under the Federal anti-trust statutes has been found, . . ." (R. 55). The question presented in this litigation is important throughout the Federal system and the meaning of the law which states "any person who shall be injured in his business or property . . . may sue therefor . . ." will continue to be obscure and the subject of diverse opinions until this Court has defined and made certain the words of the law which insure to small business men the right to engage in business without the oppressive restraint of unlawful combinations.

2.

Even if it is held that petitioner is not a person who has been injured in his business or property he is the managing partner of Coast Oil Company under the Articles of Partnership and can bring the action on behalf of the partnership despite the local law of the state of the domicile of the partners, because the cause of action is "a substantive right existing under the . . . laws of the United States" (Rule 17 (b) Federal Rules of Civil Procedure).

To arrive at the conclusion that petitioner cannot bring this action the District Court and Court of Appeals have held in effect: (1) That Jack Coast is not a "person" who has been "injured in his business or property"; (2) that the cause of action under the anti-trust laws belongs to Coast Oil Company, a partnership, and not to Jack Coast; and (3) that the only way the partnership can sue is through each and every one of its partners. (R. 64). The Court of Appeals stated "We think the cause of action is vested in the partnership, a distinct legal entity under Louisiana law." (R. 65).

Purporting to follow the Louisiana jurisprudence, the District Court and the Court of Appeals have held that the partnership itself must be a party plaintiff and the only way the partnership can become a party plaintiff is for each and every partner to join in the suit (R. 54 and 65). The following illustration sets forth the holding of the Courts below: If the X-Y Company is a Louisiana partnership composed of X and Y, residents of Louisiana, then any suit on behalf of X-Y Company must be brought in the following style: "The complaint of X individually and Y individually and the X-Y Company, a partnership composed of X and Y, the sole and only partners thereof, with respect shows the Court, etc." The Courts below reach this conclusion after examining the frequently repeated statements in Louisiana jurisprudence that a partnership is a legal entity. (R. 54 and 64).

In spite of the statements in the jurisprudence of Louisiana the entity theory of partnerships is hollow and

meaningless terminology in light of the further jurisprudence of the state to the effect that the only way the entity can come into Court is through each and every partner. *Wolfe v. New Orleans Tailor Made Pants Co.*, 52 La. Ann. 1357, 27 So. 893, quoted at length in the opinion of the District Court (R. 50) and cited in the opinion of the Court of Appeals (R. 65). Louisiana gives lip service to an entity theory of partnerships in words only and the true position of partnerships in Louisiana is no different from that in common law jurisdictions. In both Louisiana and in common law jurisdictions each and every partner must be a party plaintiff in order to properly engage the partnership in litigation. This conclusion has been thoroughly analyzed in the most comprehensive study of Louisiana partnership law which has been made wherein the author stated:

> "The conclusion seems unavoidable that Louisiana's entity theory has not resulted in practices which differentiate Louisiana law from law in other states. In the first place, many states have adopted entity ideas which even verbally are not much different from the entity concept Louisiana borrowed from the French commentators. But more significant, this section has shown that many of the supposed differences between the aggregate and entity theories are purely verbal." (F. Hodge O'Neal "An Appraisal of the Louisiana Law of Partnership", IX La. Law Review, 307 at page 472.)

The background of the Louisiana law has been related to set forth the very important question presented

in this case under Rule 17 (b) of the Federal Rules of Civil Procedure. Rule 17 (b) states:

> "*Capacity to Sue or Be Sued.* The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., § § 754 and 959 (a)."

It has been pointed out in several authorities that Rule 17(b) was adopted to allow a partnership or unincorporated association to sue and be sued as an entity in the Federal Courts where a federal right is involved for the purpose of removing the impracticable and burdensome restriction of the common law which required all members of the partnership to be joined as plaintiffs or defendants where a federal right is involved. One of the leading cases on this subject is *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975. In *2 Barron and Holtzoff Federal Practice and Procedure* at page 32 it is stated:

"Among the case in which the enforcement of federal substantive rights has been held to justify actions by or against such associations regardless of the state law are actions under the Fair Labor Standards Act, [7] the National Labor Relations Act,[8] Labor Management Citations Act,[9] and Sherman Anti-Trust Acts,[10] the patent laws,[11] the price control statutes,[12] the War Labor Disputes Act, [13] and actions involving constitutional rights.[14]

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7 A Missouri voluntary, co-operative, mutual association could be sued in Federal District Court under Fair Labor Standards Act, 29 U.S.C.A. § 201 et seq., notwithstanding that under laws of Missouri associations could not be sued as an entity. Schmidt v. People Telephone Union of Maryville, Mo., C.C.A. 8th, 1943, 138 F. 2d 13.

Under the Fair Labor Standards Act of 1938, 29 U.S.C.A. § § 203 (a), 216 (b), and Rules, unincorporated associations which act as employers may be sued in their own names in both federal and state courts. Williams v. United Mine Workers of America, 1943, 172 S.W. 2d 202, 204 Ky. 520, 149 A.L.R. 505.

8 Textile Workers Union of America v. Amazon Cotton Mill Co., D.C.N.C. 1947, 76 F. Supp. 159, reversed on other grounds, Amazon Cotton Mill Co. v. Textile Workers Union of America, C.C.A. 4th, 1948, 167 F. 2d 183.

9 Congress, having created a substantive right of management or labor to sue to enforce a collective bargaining contract in an industry affecting interstate commerce in the exercise of its power under the commerce clause, U.S.C.A. Const. Art. 1, § 8, Cl. 3, may also provide procedure for enforcing that right by making voluntary labor organizations legal entities for purpose of suit. Wilson & Co. v. United Packinghouse Workers of America, D.C.N.Y. 1949, 83 F. Supp. 162.

10 A labor union having substantive rights existing under Sherman Anti-Trust Act, 15 U.S.C.A. § § 1-7, 15 note or National Labor Relations Act 29 U.S.C.A. § 151 et seq. has capacity to bring a suit in federal court to enforce such rights, though it is an unincorporated association having no capacity to sue under law of state in which such court is held. United Brick & Clay Workers of America v. Robinson Clay Product Co., D.C. Ohio 1946, 64 F. Supp. 872.

11 Under this rule, unincorporated voluntary association of railroad companies could be sued in its common name for alleged infringement of patents. Sperry Products v. Association of American Railroads, D.C.N.Y. 1942, 44 F. Supp. 660, reversed on other grounds 132 F. 2d 408, 145 A.L.R. 694, certiorari 63 S. Ct. 1031, 2 cases, 319 U.S. 744, 87 L. Ed. 1700.

After discussing *United Mine Workers of America v. Coronado Coal Company*, supra, Professor Moore states "Rule 17(b) very properly extends the holding of that case to the converse situation, and authorizes a partnership or other unincorporated association to *sue* as an entity for the purpose of enforcing a federal substantive right". *3 Moore's Federal Practice*, 2nd Ed., Section 17.25, page 1409.

In the instant case Jack Coast is the managing partner which power was given him by the Articles of Partnership (R. 43). The cause of action herein sued upon is a substantive right arising under the law of the

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A patent infringement suit may be brought in the name of a partnership. Gregory v. Royal Typewriter Co., D.C.N.Y. 1939, 27 F. Supp. 160.

12 In action under price control statutes, process against partnership under its partnership name and service on one of partners bring the partnership and partnership assets before the court. Bowles v. Marx Hide & Tallow Co., D.C.Ky. 1945, 4 F.R.D. 297.

Contra, in a dictum which did not cite Rule 17, Bowles v. Brazman, D.C. Mo. 1945, 4 F.R.D. 318.

13 An unincorporated union is suable as an entity for the purpose of enforcing against it a federal substantive right under the War Labor Disputes Act, 50 U.S.C.A. App. § § 309, 1501-1511. Thermoid Co. v. United Rubber Workers of America, Local No. 83, .C.I.O., D.C.N.J. 1947, 70 F. Supp. 228.

14 A voluntary unincorporated association composed of negro teachers in the public schools of Norfolk was a "proper party" plaintiff in action for declaratory and injunctive relief from unconstitutional discrimination against colored school teachers in fixing of salaries. Alston v. School Board of City of Norfolk, C.C.A. 4th, 1940, 112 F. 2d 992, 130 A.L.R. 1506, certiorari denied 61 S. Ct. 75, 311 U.S. 693, 85 L. Ed. 448.

In action by unions and individual members thereof to enjoin state and municipal officials from violating rights of unions and members to picket during strike, the individual members, as citizens of the United States, were "proper parties", and the unions , being voluntary associations of individuals, were "proper parties" to conduct the suit in a representative capacity in the interest of their members. United Elec. Radio & Mach. Workers of America, CIO, v. Baldwin, D.C.Conn. 1946, 67 F. Supp. 235.

United States. Coast has sought to amend his petition so as to add Coast Oil Company as a party plaintiff within the meaning of Rule 17(b). (R. 35.) The proposed amendments have been refused in both the District Court and the Court of Appeals.

The District Court has held that Rule 17(b) is not applicable because under state law the partnership alone as an entity must sue and this can be accomplished only if each and every partner joins as a party plaintiff. The District Court has ignored Rule 17(b) and has not given any effect whatever to the right of a partnership to sue in its name *regardless* of state law when a federal substantive right is involved. The Court of Appeals has not specifically mentioned Rule 17(b) in its opinion but apparently that Court reached the same conclusion.

The uniform administration of the Federal Rules of Civil Procedure is of primary importance. The meaning and interpretation of Rule 17(b) has been the subject of frequent opinions by the District Courts and Courts of Appeal. No cases have been found involving the question raised here but in the many cases involving the rights of associations to sue and be sued it has been held in every instant that Rule 17(b) gives this right regardless of state law. *Schmidt v. People Telephone Union of Maryville, Mo.* (CCA 8, 138 F. (2d) 13; *Wilson and Company v. United Packing House Workers of America*, D.C. N. Y. 83 Fed. Supp. 162; *United Brick and Clay Workers of America v. Robinson Clay Products Company*, D. C. Ohio, 64 Fed. Supp. 872; and *United Mine Workers of America*

v. Coronado Coal Company, supra. The question is important in numerous cases where a federal right is involved, i. e. cases arising under the Fair Labor Standards Act, the National Labor Relations Act, Labor Management Citations Act, the patent laws, the price control statutes, the War Labor Disputes Act, the National Railway Labor Act, cases involving constitutional rights as well as anti-trust litigations.

3.

Even if it is assumed that petitioner Coast is not a person who has been injured in his business or property within the meaning of the anti-trust laws and that the cause of action belongs to Coast Oil Company, a partnership, and petitioner does not have the right to sue for the partnership under Rule 17(b), then the decision of the Court of Appeals is in error in denying the petitioner the right to amend his complaint under Rule 19(a) of the Federal Rules of Civil Procedure by making Justin R. Querbes and/or the entity, Coast Oil Company, parties defendant or involuntary plaintiffs.

The District Court refused to allow Querbes to be made a party defendant in the following language: "Joining Querbes as a hostile defendant would deprive this court of jurisdiction, since according to the allegations both he and plaintiff are citizens of Louisiana". (R. 56). This statement is obviously erroneous because jurisdiction is not based on diversity of citizenship but is grounded on the anti-trust laws. *General Investment Company v. New York Central Railroad Company*, 271 U. S. 228, 46 S. Ct.

496, 70 L. Ed. 920, and *Parker v. Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315.

In a supplemental opinion the District Court stated that it "would have no power to compel Querbes to join in the present suit" for the reason that "his [Coast] making Querbes a party is for the purpose of having the Court adjudicate that the latter should join in the demand for damages to the partnership, not withstanding his refusal to do so, and to that extent it is solely an issue between the two partners" and "the other defendants have no interest in this controversy between the two partners and to that extent it would be between two citizens of this state alone, and in which the court would be without jurisdiction". (R. 59).

On appeal the Court of Appeals also denied petitioner the right to make Querbes a party defendant for the purpose of causing the action to be maintained by the partnership under Rule 19(a) in the following manner: "The difficulty is that the plaintiff himself has no standing, joint or otherwise, to maintain this action. Rule 19(a), supra, relates to *joinder* of parties, it permits a plaintiff under proper circumstances to require another person or persons to *join* with him, but it makes no provision for a plaintiff to require another person to maintain an action vested solely in such other person, even though its maintenance might result in benefit to the plaintiff." (R. 66).

The statements of the District Court relative to Rule 19(a) were not commented upon by the Court of Appeals. There are numerous reasons why the District

Court was in error in its ruling. In the first place, no money judgment is sought by the plaintiff against Querbes. The proposed amendments to the original complaint specifically so state (R. 35-37). Joining Querbes as a defendant was requested on the grounds that he refused to join as a plaintiff under Rule 19(a) of the Federal Rules of Civil Procedure. This is a procedural and an equitable remedy as distinguished from an action at law. The purpose of joining the reluctant partner is not to obtain a money judgment against him but for the purpose of obtaining a judgment in behalf of the partnership or Coast against the real defendant that would be binding on the partner who refused to join in the action.

The provision of Rule 19(a) for making a person a defendant comes from Equity Rule 37 and from similar provisions which are common in state courts. It has been uniformly held in all jurisdictions in which the question has arisen that when one partner refused to join in a suit by the partnership to assert a partnership claim, that the reluctant partner may be made a party defendant.

Arkansas: *Ingram Lumber Company v. Ingersoll et al*, 93 Ark. 447, 125 S.W. 139.

California: *Nightingale v. Scannell*, 6 Calif. 506.

Indiana: *Hill v. Marsh*, 46 Ind. 218.

New York: *Freeman v. Abramson*, 61 NYS 839; *Baron v. Lakow*, 106 NYS 243.

Oklahoma: *Republic Supply Company v. Colbert*, 70 F. (2d) 586.

Texas: *Howell v. Bartlett*, 19 S. W. (2d) 104.

Washington: *Henson v. First Security & Loan Co.*, 2 P. (2d) 85.

Federal: *Edgell v. Felder*, 84 F. 69; *Charne v. Essex Chair Company, et al*, 92 F. Supp. 164, and cases cited therein.

After a thorough discussion of the matter in *Simkins Federal Practice*, 3rd Ed., Sec. 395, p. 346, the following conclusion is stated:

> "As a general rule, *partnership rights* and liabilities cannot be determined unless all the partners are parties to the suit, and they are *indispensable* parties But sometimes one member of a partnership may desire to file a suit in which the others refuse to join, in which case those who refuse to join must be made defendants.
>
> "Sometimes, also, it occurs that because of the citizenship of one or more of the partners the jurisdiction of the Federal Court would be ousted, and, being *indispensable* parties, they cannot be dismissed so as to give jurisdiction."

The rule in Louisiana is no different in substance from the rule obtaining generally in other jurisdictions. With the exception of cases involving federally created rights (Rule 17(b) Federal Rules of Civil Procedure), the general rule throughout the United States is that all of the partners must join in bringing a cause of action be-

longing to the partnership. 68 *C.J.S. Partnership*, Sec. 208, page 680. This is precisely the situation in Louisiana where all of the partners must join in bringing the cause of action in the name of the partnership. *Wolfe v. Now Orleans Tailor Made Pants Co.*, supra. Although the question has never arisen in Louisiana relative to the right to join a partner as a defendant who has refused to join as a plaintiff in asserting a partnership claim, it has been indicated that such could be done if the question were presented. *Pierce v. Robertson*, 190 La. 377, 182 So. 544; *Reed v. Warren*, 172 La. 1082, 136 So. 59.

Even if the question had arisen in Louisiana and Louisiana had decided the question contrary to every other jurisdiction where it has been decided such holding would be of no moment here. This case involves the enforcement of the cause of action granted by a federal statute and the right does not exist by virtue of any state law. A recovery under a federal statute "must be had in the mode and by and for the persons, and for the reasons, designated in the Act". *United States v. Klein, et al*, 153 F. (2d) 55 and 59. The question of joinder of parties under such circumstances is procedural and is to be determined under the Federal Rules of Civil Procedure and not by the decisions of any state. *2 Barron and Holtzoff, Federal Practice and Procedure*, page 57; *Moore's Federal Practice*, 2d Ed., pages 2152-3. In the case *Mutual Benefit Health and Accident Ass'n. v. Thomas*, 123 F. (2d) 353 at page 356 the Court stated:

> "We do not think the Court was at liberty to follow the practice of the state of Arkansas if that differed from that established by the rules of Civil Procedure."

The complaint in this case presents only the question of whether or not defendants are responsible in damages under the anti-trust laws of the United States. All other questions, such as joinder of parties are incidental to the question of liability under the anti-trust laws. Since only the Federal Courts have jurisdiction of that question they also have jurisdiction of all incidental questions that have or may arise in the case. *Hart v. Keith Exchange*, 262 U. S. 271, 43 Sup. Ct. 540, 67 L. Ed. 977; *United Fuel Gas Co. v. Railroad Commissioner of Ky.*, 278 U. S. 300, 49 Sup. Ct. 150, 73 L. Ed. 390; *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 37 Sup. Ct. 673, 6 L. Ed. 1280.

The statements made in the opinion of the Court of Appeals relative to joinder under Rule 19(a) are likewise in error. The Advisory Committee's Note on Rule 19 (a) states:

> "The first sentence with *verbal* differences (e. g., 'united' interest for 'joint interest') is to be found in Equity Rule 37 (Parties Generally - Intervention). Such compulsory joinder provisions are common."

Ohlinger's Federal Practice, Vol. 3, p. 309, in comparing the language from Equity Rule 37 - "Persons having a *united interest* must be joined on the same side as plaintiffs or defendants, but where anyone refuses to join,

he may for such reason be made a defendant." - with the language of Rule 19(a), F.R.C.P. states:

> "The change, under the present rule to 'persons having a joint interest' is noted by the Advisory Committee as a 'verbal' difference. It seems clear that the term must be given a nontechnical meaning which will correspond with the usage under the equity rule."

Hughes Federal Practice Jurisdiction & Procedure, Vol. 18, Sec. 21221, p. 32, points out that although Rule 19(a) applies to "joint owners of rights" in a technical sense, nevertheless "the provision is not confined to this restricted meaning".

Moore's Federal Practice, Second Edition, Vol. 3, page 2144, states in connection with Rule 19(a) that:

> "The phrase 'joint interest' is not to be given a technical meaning . . . The phrase must be construed to mean those who were necessary or indispensable parties under the previous practice."

The Courts below have held that since the interest of a partner in Louisiana in the claims or causes of action of a partnership is not technically speaking a "joint interest" that therefore the partners do not come within the meaning of Rule 19(a). It should be apparent that the term "joint interest" in the rule is not to be restricted to the technical meaning of "joint owners". The phrase means that persons have a "joint interest" when they are in such a relationship that their jounder is required in

asserting an action. That, in other words, they are indispensable parties. That is exactly what partners are in Louisiana - they are indispensable parties in asserting a claim of a partnership - the partnership claim can be asserted only *by* and *through* the partners even though it must be done in the partnership *name*.

The statement of the Court of Appeals that "The difficulty is that the plaintiff himself has no standing, joint or otherwise, to maintain this action" is simply incorrect. (R. 66). The plaintiff along with his partner Querbes has a joint standing to bring this action - they and they alone can bring the action. Though the action is brought in the name of a partnership - it can only be brought by the two partners in that name and no one else can bring the action. They are the indispensable parties to such an action in the fullest sense.

In every other jurisdiction in the United States in which the question has arisen, including the two cases from other Courts of Appeal mentioned above, it has been held that when one partner refuses to join in bringing a suit to enforce a claim belonging to a partnership that the reluctant partner may be joined as a defendant for the purpose of asserting the cause of action belonging to the partnership. These holdings are made on the basis of the code provisions that were the basis of Equity Rule 37 and in turn Rule 19(a) of the Federal Rules of Civil Procedure. The instant case whereby Coast has been denied this right is the only case ever to arise in either the Federal or the State Courts of the United States in so far as the available

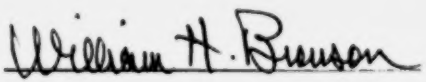
citators and digests disclose where the contrary result has been reached. Rule 19(a) should not be given a technical meaning and therefore confined to "joint owners" in a technical sense. There is no basis for a distinction between the jurisprudence of Louisiana and any other jurisdiction.

Not only are the Courts below in error in reaching this decision but important federal questions have been decided contrary to all authority which petitioner has been able to locate. The supervisory jurisdiction of this Court is invoked to correct the errors below and make uniform the decisions of the lower courts on the important and frequently litigated subject of Rule 19(a).

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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